

**DEPARTMENT OF THE AIR FORCE GRANT OF RIGHT-OF-WAY TO *(Name Of Grantee)* FOR PROPERTY
LOCATED ON OTIS ANGB**

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DEPARTMENT OF THE AIR FORCE
GRANT OF RIGHT-OF-WAY
To *(Name Of Grantee)*
FOR PROPERTY LOCATED ON
OTIS ANGB

PREAMBLE

THE SECRETARY OF THE AIR FORCE, hereinafter referred to as “Grantor”, acting under the authority of 10 U.S.C. § 2688, hereby grants to *(name of Grantee)*, hereinafter referred to as “Grantee”, a corporation organized and doing business under the laws of the State of Massachusetts, a Right-of-Way for operation of a utility system for the treatment and supply of water at Otis ANGB (hereinafter referred to as “Installation”), the areal extent of which Right-of-Way is identified in **EXHIBITS A and B**, both attached hereto and made a part hereof, hereinafter referred to as the “Premises”. While the Premises contain the utility system, the utility system is not part of the Premises; the utility system is the property of Grantee. Grantor and Grantee, when referred to together, are hereinafter referred to as the “Parties”, and may be referred to in the singular as a “Party”. For purposes of this Right-of-Way, Grantor includes the United States Government and the Department of the Air Force. This Right-of-Way grants to Grantee the right and privilege to operate its utility system located on the Installation,

including construction, installation, repair, and maintenance of its system. Some or all of the Premises are not the property of the United States, but are leased by the United States from the State of Massachusetts, hereinafter referred to as “Lessor”. Any grant under this Right-of-Way made by Grantor extends no further than Grantor’s rights in the Premises.

THIS RIGHT-OF-WAY is granted subject to the following conditions.

BASIC TERMS

1. TERM

1.0. This Right-of-Way shall be effective beginning on _____, 200_, and shall remain in effect for a period co-extensive with the Department of the Air Force land lease, Numbers: MA-DA DACA 51-5-77-127, MA-DOTCG Doc#31836, MA-DEP AF DACA 51-5-75-293 between Lessor and the United States of America, dated _____, _____, and _____, and as it may be amended from time to time, unless sooner terminated by Grantor or by abandonment. At the end of its full term, if the Lessor and the United States renew, extend, or replace the expiring lease with a new lease not inconsistent with the terms of this Right-of-Way, this Right-of-Way shall be renewed for an additional period, co-extensive with the renewed, extended, or replaced lease, subject to agreement between the Parties on the payment of consideration at least equal to the consideration required by law at the time of renewal. The obligations of Grantee, including those regarding remediation of environmental contamination and removal of structures, facilities, and equipment installed or owned by Grantee, shall remain in effect after the expiration, termination, or abandonment of this Right-of-Way unless otherwise agreed to by the Parties; to the extent it has authority to do so, Grantor shall allow Grantee reasonable access to the Premises to fulfill these obligations.

2. CONSIDERATION AND COSTS

2.1. Grantee shall pay to Grantor consideration at least equal to the fair market value of this Right-of-Way; that consideration is included in the Bill of Sale for the utility system of even date with this Right-of-Way.

2.2. The use, operation, and occupation of the Premises pursuant to this Right-of-Way shall be without cost or expense to the Department of the Air Force, except as may be specifically provided otherwise herein. To the extent such recovery is independent of this Right-of-Way, nothing in this Condition 2.2 abrogates any right to recover costs or expenses that arise pursuant to other contractual relationships between Grantor and Grantee, in their capacities under such independent contractual relationships.

3. CORRESPONDENCE

3.0. All correspondence to be sent and notices to be given pursuant to this Right-of-Way shall be addressed, if to Grantor, to 102nd CES/CD, Otis ANGB, 971 South Outer Road, Box 22, Otis ANGB, MA 02542-5028, and, if to Grantee, to *(insert Grantee's address)*, or as may from time to time otherwise be directed by the Parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, deposited, postage prepaid, and postmarked in a post office regularly maintained by the United States Postal Service.

4. ACCESS

4.1. The use, operation, and occupation of the Premises are subject to the general supervision and control of the Installation's commander or his duly authorized representative, hereinafter referred to as "said officer".

4.2. In accepting the rights, privileges, and obligations established hereunder, Grantee recognizes that the Installation serves the national defense and that Grantor will not permit the operation, construction, installation, repair, and maintenance of a utility system and the provision of utility services to interfere with the Installation's military mission. This Installation is an operating military installation which is closed to the public and is subject to the provisions of the Internal Security Act of 1950, 50 U.S.C. §

797, and of 18 U.S.C. § 1382. Access to the Installation is subject to the control of its commanding officer and is governed by such regulations and orders as have been lawfully promulgated or approved by the Secretary of Defense or by any designated military commander. Any access granted to Grantee, its officers, employees, contractors of any tier, agents, and invitees is subject to such regulations and orders. This Right-of-Way is subject to all regulations and orders currently promulgated or which may be promulgated by lawful authority as well as all other conditions contained in this Right-of-Way. Violation of any such regulations, orders, or conditions may result in the termination of this Right-of-Way. Such regulations and orders may, by way of example and not by way of limitation, include restrictions on who may enter, how many may enter at any one time, when they may enter, and what areas of the Installation they may visit, as well as requirements for background investigations, including those for security clearances, of those entering. Grantee is responsible for the actions of its officers, employees, contractors of any tier, agents, and invitees while on the Installation and acting under this Right-of-Way.

4.3. In the event all or any portion of the Premises shall be needed by the United States or in the event the presence of Grantee's property shall be considered detrimental to governmental activities, Grantee shall, from time-to-time and upon notice to do so, and as often as so notified, remove or relocate its property to such other location or locations on the Premises (or substitute land of Grantor which shall then become part of the Premises) as may be designated by said officer, and in the event Grantee's property shall not be removed or relocated within ninety (90) days after any aforesaid notice, the Grantor may cause the same to be done. Condition 2.2 notwithstanding, any removal or relocation of Grantee's property at the direction of the Grantor under this Condition 4.3 shall be at Grantor's expense.

4.4. Grantee further recognizes that the operation, construction, installation, repair, and maintenance of the utility system on the Installation may be subject to requirements and approvals not ordinarily imposed by civilian authorities, including, but not limited to, compliance with the National Environmental Policy Act of 1969, as implemented. Grantee agrees to abide by all applicable regulations and to obtain all required approvals as specified in this Right-of-Way or as directed by said officer.

4.5. Utility poles, buried conduits, pipes, tubes, wires, and other utility systems and pieces of equipment on the Installation may be the property of a non-federal entity. In that case, use of those poles, conduits, pipes, tubes, wires, or other utility systems and pieces of equipment will be subject to separate agreement between Grantee and the owner of the poles, conduits, pipes, tubes, wires, or other utility systems and pieces of equipment. Access will still be governed by this Right-of-Way but may also be subject to conditions, including payment of a fee, required by the owner of the poles, conduits, pipes, tubes, wires, or other utility systems and pieces of equipment.

4.6. Grantor may, during the term of this Right-of-Way, sell existing poles, conduits, pipes, tubes, wires, or other utility systems and pieces of equipment to a private or public entity. In such an event, Grantee's rights under this Right-of-Way will not extend to disturbing or damaging the property of other entities who also hold grants of rights-of-way on the Installation, and any operation, construction, installation, repair, or maintenance by Grantee that disturbs or damages the property of such other entities shall be the responsibility of Grantee and Grantee shall be liable to such other entities for any disturbance or damage to their property caused by Grantee's actions.

5. TERMINATION

5.1. This Right-of-Way may be terminated, in whole or in part, by the Grantor for (1) failure to comply with the terms of the Right-of-Way as determined under Condition 6, or (2) abandonment. This Right-of-Way shall terminate without further action or notice on the part of the Parties if Grantee abandons its rights and privileges under this Right-of-Way; abandonment shall occur if Grantee fails to utilize the Premises, or any part of them, to provide services to customers for a period of one year; given good cause, Grantor may, on a case by case basis, extend this one year period. Abandonment of a part of the Premises shall only apply to that part of the Premises abandoned. Subject to Condition 2.2, any termination in accordance with this Condition 5 shall not create any liability on the part of Grantor for Grantee's capital costs, anticipated profits or fees, and costs of construction, installation, maintenance, upgrade, and removal of facilities, and

such costs and anticipated profits or fees will not be recoverable from Grantor under this Right-of-Way.

5.2. This Right-of-Way does not guarantee that the Installation will remain open or active at its current level. The number of potential customers may change from time to time depending on military requirements. Such change is part of the risk Grantee assumes. Subject to Condition 22.2, this Right-of-Way is not exclusive in that Grantor may also grant like rights and privileges to others, including Grantee's competitors. Closure of the Installation, reduction in the level of activity at the Installation, change in the number of potential customers, Grantor's granting like rights and privileges to others including Grantee's competitors, and Grantor's allowing alternative forms of utility service will not constitute termination of this Right-of-Way for convenience of the Grantor and, subject to Condition 2.2, creates absolutely no obligation on the part of Grantor under this Right-of-Way to reimburse Grantee for any capital costs, anticipated profits or fees, or costs of operation, construction, installation, maintenance, upgrade, and removal of facilities. Grantee acknowledges that it is solely responsible for all such costs and anticipated profits or fees and that such costs and anticipated profits or fees will not be recoverable from Grantor under this Right-of-Way.

6. DEFAULT

6.1. The following shall constitute a default and breach of this Right-of-Way by the Grantee: The failure to comply with any provision of this Right-of-Way, where such failure to comply continues for ten (10) days after delivery of written notice thereof by the Grantor to the Grantee. If, however, the time required to return to compliance exceeds the ten (10) day period, the Grantee shall not be deemed to be in default or breach if the Grantee within such period shall begin the actions necessary to bring it into compliance with the Right-of-Way in accordance with a compliance schedule acceptable to the Grantor.

6.2. In the event of any default or breach of this Right-of-Way by the Grantee, the Secretary of the Air Force may terminate this Right-of-Way at any time after expiration of the time required to return to compliance provided for in Condition 6.1

upon written notice of the termination to the Grantee. The termination notice shall be effective as of a day to be specified therein, which shall be at least seven (7) but not more than thirty (30) days after its receipt by the Grantee.

6.3 Termination for default under this Condition 6 extends only to termination of this Right-of-Way and does not constitute cancellation of the Bill of Sale for the utility system of even date with this Right-of-Way, except to the extent this Right-of-Way is a part of said Bill of Sale.

OPERATION OF THE PREMISES

7. CONDITION OF PREMISES

7.0. Grantee has inspected and knows the condition of the Premises. Subject to Condition 15, the Premises are granted in an “as is, where is” condition without any warranty, representation, or obligation on the part of Grantor to make any alterations, repairs, improvements, or corrections to defects whether patent or latent. At such times and for such part of the Premises as said officer may determine, the Parties will sign a Physical Condition Report to reflect the condition of the Premises prior to the Premises being disturbed by the activities of Grantee. Such Report shall be used to indicate the condition of the Premises prior to their being disturbed in order to compare them with the Premises subsequent to the activities of Grantee to ensure Grantee has returned the Premises to the condition required by this Right-of-Way.

8. PROTECTION OF PREMISES

8.0. As regards the Grantee’s use of the Premises and its property on the Premises, Grantee shall, at all times, protect, repair, and maintain the Premises in good order and condition at its own expense and without cost or expense to Grantor. Grantee shall exercise due diligence in protecting the Premises against damage or destruction by fire, vandalism, theft, weather, or other causes related to Grantee’s activities. Any property on the Premises damaged or destroyed by Grantee incident to the exercise of the

rights and privileges herein granted shall be promptly repaired or replaced by Grantee to the satisfaction of said officer.

9. AIR FORCE PROPERTY

9.1. Any interference with the use of or damage to property under control of the Department of the Air Force, including uses described in Condition 9.2, incident to the exercise of the rights and privileges herein granted shall be promptly corrected by Grantee to the satisfaction of said officer. If Grantee fails to promptly repair or replace any such property after being notified to do so by said officer, said officer may repair or replace such property and Grantee shall be liable for the costs of such repair or replacement.

9.2. Grantor has property installed on or attached to the property of Grantee, including Grantee's poles, conduits, pipes, ductbanks, tubes, towers, buildings, structures, or other utility systems and pieces of equipment. Grantor retains and reserves the right, at no cost to itself, to continue to use the property of Grantee, without damaging it, to support such installed or attached property, including the right of Grantor, at no cost to Grantee, to maintain, repair, operate, upgrade, and replace such installed or attached property. Grantor shall provide reasonable notice to Grantee before engaging in any such maintenance, repair, upgrade, or replacement. Any upgrade or replacement of such installed or attached property shall comply with any safety regulations imposed by public authority upon Grantee and applicable to Grantee's property upon which Grantor's property is installed or attached. In the case of multiple use ductbanks, those ducts identified by Grantor in **EXHIBIT B** as being reserved for current or future Grantor use shall remain for the use of Grantor in accordance with this Condition 9.

10. RESTORATION OF PREMISES

10.0. Condition 9.2 notwithstanding, on or before (or, in the case of abandonment, after) the date of expiration of this Right-of-Way or its cancellation by agreement of Grantor and Grantee or its termination by the Secretary of the Air Force,

Grantee shall vacate the Premises, remove its property therefrom, and restore the Premises to their original condition without expense to the United States. Such restoration shall include, if applicable, removal of contamination caused by Grantee. Grantor may, in its sole and absolute discretion, consent to Grantee abandoning all or part of its utility system on the Installation, but such consent must be unequivocal and in writing: Provided, however, that any buried conduits, pipes, ductbanks, tubes, or wires, the nature, location, and depth of which are known to Grantee and shown on Grantee's records in accordance with Condition 11.4, and which neither contain an environmental contaminant nor pose an environmental or safety hazard, may be abandoned with Grantor's consent, which consent shall not be unreasonably withheld. In regard to that portion of the Premises subject to the lease referred to in Condition 1, in the event that the United States terminates its activities on the Premises due to the expiration or other termination of the lease referred to in Condition 1, Grantee may, subject to the consent of Lessor, retain its property in place and continue its use under such terms as it and Lessor may agree; Provided, however, that such terms and such continued use shall be at no cost to the United States and shall not keep in effect this Right-of-Way.

11. ALTERATION OF PREMISES

11.1. No additions to or alterations of the Premises shall be made without the prior written approval of said officer. Approval by Grantor will not be unreasonably withheld. Said officer may in his discretion grant blanket approvals in advance for certain specified categories of work. Any and all operations, construction, installation, repair, and maintenance activity of any type whatsoever must comply with this Right-of-Way and with its **Attachment 1**, attached hereto and made a part hereof.

11.1.1. Grantee may, after obtaining prior written approval of said officer, change the capacity of the utility system on the Premises but such change must be solely to better serve the Installation.

11.1.2. Should Grantee desire to change the capacity of the utility system on the Premises other than for the sole purpose of better serving the Installation, or to extend the utility system on the Installation but off the Premises, Grantor must first consent through

an amendment of this Right-of-Way in accordance with Condition 27. Grantor has no obligation to consent to such an amendment and may require, in addition to other requirements, additional consideration.

11.2. Grantee shall neither place nor display advertising of any kind whatsoever on the Premises nor on its property located on the Premises, nor suffer any advertising of any kind whatsoever to be placed on its property located on the Premises. Reasonable markings on Grantee's property, including vehicles, for the purpose of identifying it as Grantee's property are not prohibited.

11.3. If Grantee's property located on the Premises intrudes into airspace subject to regulation under the Federal Aviation Regulations or their Air Force counterparts, such property shall be operated, constructed, installed, repaired, and maintained in conformance with such regulations.

11.4. Grantee shall maintain records showing the locations and nature of its property on the Premises. Such records shall be kept current by Grantee. Grantee shall, at no cost to the Grantor, provide Grantor a copy of these records, as well as current updates upon request of said officer. For purposes of work upon the Premises by other than Grantee, upon request by Grantor, Grantee shall mark the actual location of its property within a time and in a manner acceptable to said officer. The time specified by said officer will be reasonable given the circumstances of the need of Grantor.

12. COSTS OF SERVICES

12.0. As regards the Grantee's use of the Premises and its property on the Premises, Grantee is responsible for all utilities, janitorial services, building maintenance, and grounds maintenance for the Premises without cost to the Department of the Air Force. The Air Force may, if its capabilities permit, consent to provide certain of these services to Grantee on a reimbursable basis.

ENVIRONMENT

13. ENVIRONMENTAL COMPLIANCE

13.0. In its activities under this Right-of-Way, Grantee shall comply with all applicable environmental requirements, and in particular those requirements concerning the protection and enhancement of environmental quality, pollution control and abatement, safe drinking water, and solid and hazardous waste. Responsibility for compliance with such requirements rests exclusively with Grantee, including liability for any fines, penalties, or other similar enforcement costs.

14. ASBESTOS AND LEAD-BASED PAINT

14.1. Grantee will not make any improvements or engage in any construction on the Premises which contain asbestos-containing material (ACM), without prior approval of said officer; any such improvements or construction shall be done in compliance with all applicable Federal, state, interstate, and local laws and regulations governing ACM. Grantee is responsible for monitoring the condition of its property containing ACM on any portion of the Premises for deterioration or damage. Grantee is responsible, at its expense, for remediation of any ACM contained on or in its property which is disturbed or damaged by Grantee or is deteriorated and of any ACM on the Premises which is disturbed or damaged by Grantee during the term of this Right-of-Way.

14.2. Grantee will test any painted surface to be affected by any of its operation, construction, installation, repair, or maintenance activities to determine if the paint is lead-based and will handle that surface in compliance with all applicable laws and regulations and at Grantee's expense.

15. SAFETY AND HAZARDOUS WASTE DISPOSAL

15.1. Grantee, at its expense, shall comply with all applicable laws on occupational safety and health, the handling and storage of hazardous materials, and the proper handling and disposal of hazardous wastes and hazardous substances generated by its activities. As between the Parties, responsibility for the costs of proper handling and disposal of hazardous wastes and hazardous substances discovered on the Premises is governed by applicable law. The terms hazardous materials, hazardous wastes, and hazardous substances are as defined in the Federal Water Pollution Control Act, the

Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Solid Waste Disposal Act, the Clean Air Act, and the Toxic Substances Control Act, and their implementing regulations, as they have been or may be amended from time to time.

15.2. Any unexploded ordnance, as that term is defined in Title 10, United States Code, discovered on the Premises by Grantee is the responsibility of Grantor and will not be disturbed by Grantee but, upon discovery, shall be immediately reported to said officer.

16. HISTORIC PRESERVATION

16.0. Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics, vestiges, remains, or objects of antiquity. In the event such items are discovered on the Premises, Grantee shall cease its activities at the site and immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed. Any costs resulting from this delay shall be the responsibility of Grantee.

17. INSTALLATION RESTORATION PROGRAM

17.1. If the Installation has not been listed on the National Priorities List (NPL) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, at the time this Right-of-Way is granted, but is listed subsequent to the granting of this Right-of-Way, Grantor will provide Grantee with a copy of any Federal Facility Agreement (FFA) that is entered into between Grantor and the U.S. Environmental Protection Agency (USEPA), along with any amendments to the FFA when they become effective.

17.2. If the Installation has been listed on the NPL at the time this Right-of-Way is granted but no FFA has been entered into, Grantor will provide Grantee with a copy of any FFA subsequently entered into along with any amendments to the FFA when they become effective.

17.3. If the Installation has been listed on the NPL at the time this Right-of-Way is granted and an FFA has been entered into, Grantee acknowledges that Grantor has provided it with a copy of the FFA, with current amendments; Grantor will provide Grantee with a copy of any subsequent amendments thereto.

18. ACCESS FOR RESTORATION

18.1. Nothing in this Right-of-Way shall be interpreted as interfering with or otherwise limiting the right of Grantor and its duly authorized officers, employees, contractors of any tier, agents, and invitees to enter upon the Premises for the purposes enumerated in Condition 18.3 and for such other purposes as are consistent with the provisions of an FFA or required to implement the Installation Restoration Program (IRP) conducted under the provisions of 10 U.S.C. § 2701, et seq. Grantee will provide reasonable assistance to Grantor to ensure Grantor's activities under this Condition 18 do not damage Grantee's property on the Premises.

18.2. The USEPA and State of Massachusetts, including their subordinate political units, and their duly authorized officers, employees, contractors of any tier, and agents have the right, upon reasonable notice to Grantee and with Grantor's consent, to enter upon the Premises for the purposes enumerated in Condition 18.3 and for such other purposes as are consistent with the provisions of an FFA. Grantee will provide reasonable assistance to USEPA and the State to ensure their activities under this Condition 18 do not damage Grantee's property on the Premises.

18.3. Purposes:

18.3.1. To conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, testpitting, testing soil borings, and other activities related to the IRP or an FFA;

18.3.2. To inspect field activities of the Air Force and its contractors of any tier in implementing the IRP or an FFA;

18.3.3. To conduct any test or survey required by the USEPA or the State relating to the implementation of an FFA or environmental conditions on the Premises or to

verify any data submitted to the USEPA or the State by the Air Force relating to such conditions; or,

18.3.4. To conduct, operate, maintain, or undertake any other response or remedial action as required under or necessitated by the IRP or an FFA, including, but not limited to, monitoring wells, pumping wells, and treatment facilities.

19. ENVIRONMENTAL BASELINE

19.0. If Grantor determines that an Environmental Baseline Survey (EBS) is required for this Right-of-Way, in accordance with Grantor's standards and requirements, it shall prepare an EBS documenting the known history of the property with regard to the storage, release, or disposal of hazardous substances thereon, and that EBS shall be attached hereto, or incorporated by reference, and made a part hereof as **EXHIBIT C**. If such an EBS is prepared, upon expiration, termination, or abandonment of this Right-of-Way, another EBS shall be prepared by Grantor, in accordance with Grantor's standards and requirements, which will document the environmental condition of the property at the end of Grantee's use of the Premises. That EBS shall be attached hereto, or incorporated by reference, and made a part hereof as an Exhibit. The findings of the two EBSs shall be used in settling factual aspects of claims for restoration of the Premises. Grantee is responsible for the costs of any environmental restoration necessitated as a result of its use of the Premises

CHANGES IN OWNERSHIP OR CONTROL

20. TRANSFER, ASSIGNMENT, LEASING, OR DISPOSAL

20.1. Grantee shall not transfer, permit, license, assign, lease, or dispose of in any way, including, but not limited to, voluntary or involuntary sale, merger, consolidation, receivership, or other means (all referred to in this Condition 20 as "transfer"), this Right-of-Way or any interest therein or any property on the Premises, or otherwise create any interest therein, without the prior written consent of said officer. Such consent shall not

be unreasonably withheld or delayed, subject to the provisions of Conditions 20.2 through 20.4.

20.2. Any transfer by Grantee shall be subject to all of the terms and conditions of this Right-of-Way and shall terminate immediately upon the expiration or any earlier termination of this Right-of-Way, without any liability on the part of Grantor to Grantee or any transferee. Under any transfer made, with or without consent, the transferee shall be deemed to have assumed all of the obligations of Grantee under this Right-of-Way. No transfer shall relieve Grantee of any of its obligations hereunder, except, in the case of an assignment, if Grantor explicitly agrees to relieve Grantee of its obligations hereunder; provided, however, that in the case of an assignment, Grantor may, in its sole discretion, withhold consent to the assignment.

20.3. Grantee shall furnish said officer, for his prior written consent, a copy of each transfer Grantee proposes to execute. Such consent by said officer may include the requirement to delete, add, or change provisions in the transfer instrument as Grantor shall deem necessary to protect its interests. Consent to or rejection of any transfer shall not be taken or construed to alter, diminish, or enlarge any of the rights or obligations of either of the Parties under this Right-of-Way, nor form a basis for any cause of action against or liability of Grantor.

20.4. Any transfer instrument must expressly provide that—(1) the transfer and transferee are subject to all of the terms and conditions of this Right-of-Way; (2) the transfer shall terminate with the expiration or earlier termination of this Right-of-Way; and (3) in case of any conflict between this Right-of-Way and the transfer instrument, this Right-of-Way shall control. A copy of this Right-of-Way must be attached to the transfer instrument.

21. LIENS AND MORTGAGES

21.0. Grantee shall not engage in any financing or other transaction creating any mortgage upon the Premises, place or suffer to be placed upon the Premises any lien or other encumbrance, or suffer any levy or attachment to be made on Grantee's interest in the Premises under this Right-of-Way. On the date of its execution or filing of record

regardless of whether or when it is foreclosed or otherwise enforced, any such mortgage, encumbrance, or lien shall be deemed to be a violation of this Condition 21 and constitute a failure to comply with the terms of the Right-of-Way.

22. OTHER GRANTS OF ACCESS

22.1. This Right-of-Way is subject to all outstanding easements, rights-of-way, leases, permits, licenses, and uses for any purpose with respect to the Premises. Grantor shall have the right to grant additional easements, rights-of-way, leases, permits, and licenses, and make additional uses with respect to the Premises. However, any such additional easements, rights-of-way, leases, permits, licenses, or uses shall not be inconsistent with the Grantee's use of the Premises under this Right-of-Way.

22.2. For those areas identified in **EXHIBIT B.3**, Grantor shall not grant any additional easements, rights-of-way, leases, permits, licenses, or other access. Grantor recognizes that these areas require restricted access and Grantee may take appropriate action to prevent unauthorized access to such areas. This Condition 22.2 will only apply to access by others than Grantor and will not limit any right of access by public authorities charged with the regulation of Grantee's activities or law enforcement.

23. REAL PROPERTY ACCOUNTABILITY

23.0. Grantor may transfer real property accountability for the Premises to another federal agency. In such event, the federal agency assuming real property accountability will stand in the place of and become Grantor without altering, diminishing, or enlarging the rights and obligations of either Grantor or Grantee under this Right-of-Way.

24. REPORTING

24.0. This Right-of-Way is not subject to 10 U.S.C. § 2662.

GENERAL PROVISIONS

25. COMPLIANCE WITH LAWS

25.0. Grantee shall comply with all applicable Federal, state, interstate, and local laws, regulations, and requirements. This may include the need for Grantee to obtain permits to operate its utility system. Grantor is not responsible for obtaining permits for Grantee nor for allowing Grantee to use permits obtained by Grantor.

26. AVAILABILITY OF FUNDS

26.0. The obligations of Grantor under this Right-of-Way shall be subject to the availability of appropriated funds. No appropriated funds are obligated by this Right-of-Way.

27. AMENDMENTS

27.0. This Right-of-Way may only be modified or amended by the written agreement of the Parties, duly signed by their authorized representatives.

28. LIABILITY

28.1. Grantor shall not be responsible for damage to property or injuries to persons which may arise from, or be attributable or incident to, the condition or state of repair of the Premises, due to its use and occupation by Grantee. Grantee agrees that it assumes all risks of loss or damage to property and injury or death to persons, whether to its officers, employees, contractors of any tier, agents, invitees, or others, by reason of or incident to Grantee's use of the Premises, and its activities conducted under this Right-of-Way. Grantee shall, at its expense, pay any settlements of or judgments on claims arising out of its use of the Premises.

28.2. Grantee shall indemnify and hold Grantor harmless against any and all judgments, expenses, taxes, liabilities, claims, and charges of whatever kind or nature that may arise as a result of the activities of Grantee, whether tortious, contractual, or other, except to the extent such claim or charge is cognizable under the Federal Tort

Claims Act, or, in regard to indemnification, to the extent Grantee is prohibited from doing so by Federal or state law.

29. INSURANCE

29.1. This Condition 29 shall only apply during those periods when Grantee has no service contract to provide utility service to the Installation; provided, however, that such service contract contains essentially the same requirements for insurance as this Condition 29 and such service contract utilizes all the Premises granted by this Right-of-Way. Self-insurance shall not be permitted under this Right-of-Way during those periods when Grantee has no service contract to provide utility service to the Installation.

29.2. During the entire period this Right-of-Way shall be in effect, the Grantee, at no expense to the Grantor, shall carry and maintain and require its contractors of any tier performing work on the Premises to carry and maintain—

29.2.1. Comprehensive general liability insurance on an “occurrence basis” against claims for “personal injury,” including without limitation, bodily injury, death, or property damage, occurring upon, in, or about the Premises including any buildings thereon and adjoining sidewalks, streets, and passageways, such insurance to afford immediate minimum protection at all times during the term of this Right-of-Way, with limits of liability in amounts approved from time to time by Grantor, but not less than ONE MILLION DOLLARS (\$1,000,000) in the event of bodily injury and death to any one or more persons in one accident, and not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) for property damage. Such insurance shall also include coverage against liability for bodily injury or property damage arising out of the acts or omissions by or on behalf of Grantee by any invitee or any other person or organization, or involving any owned, non-owned, or hired automotive equipment in connection with Grantee’s activities.

29.2.2. If and to the extent required by law, workers’ compensation and employer’s liability or similar insurance in form and amounts required by law.

29.3. All policies of insurance which this Right-of-Way requires Grantee to carry and maintain or cause to be carried or maintained pursuant to this Condition 29 shall be

effected under valid and enforceable policies, in such forms and amounts as may, from time to time, be required under this Right-of-Way, issued by insurers of recognized responsibility. All such policies of insurance shall be for the mutual benefit of Grantor and Grantee. Each such policy shall provide that any losses shall be payable notwithstanding any act or failure to act or negligence of Grantee or Grantor or any other person; provide that no cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least sixty (60) days after receipt by Grantor of written notice thereof; provide that the insurer shall have no right of subrogation against Grantor; and be reasonably satisfactory to Grantor in all other respects. In no circumstances will Grantee be entitled to assign to any third party rights of action which Grantee may have against Grantor. The foregoing notwithstanding, any cancellation of insurance coverage based on nonpayment of the premium shall be effective after fifteen (15) days written notice to Grantor. Grantee understands and agrees that cancellation of any insurance coverage required to be carried and maintained by Grantee under this Condition 29 will constitute a failure to comply with the terms of the Right-of-Way.

29.4. Grantee shall deliver or cause to be delivered upon execution of this Right-of-Way (and thereafter not less than fifteen (15) days prior to the expiration date of each policy furnished pursuant to this Condition 29) to Grantor a certificate of insurance evidencing the insurance required by this Right-of-Way.

30. ENTIRE AGREEMENT

30.0. It is expressly understood and agreed that this written instrument embodies the entire agreement between the Parties regarding the use of the Premises by the Grantee, and there are no understandings or agreements, verbal or otherwise, between the Parties except as expressly set forth herein. Nevertheless, it is understood that the Parties may enter into a utility service contract which will require use of the utility system located on the Premises; while that contract may not address the use of the Premises, it may require Grantee to use the Premises to operate its utility system in order to perform the contract service.

31. CONDITION AND PARAGRAPH HEADINGS

31.0. The headings contained in this Right-of-Way, its Attachments, and Exhibits are to facilitate reference only and shall not in any way affect the construction or interpretation hereof.

32. RESERVED

32.0. Reserved.

IN WITNESS whereof, I have hereunto set my hand by authority of the Secretary of the Air Force, this _____ day of _____, 200__.

THE UNITED STATES OF AMERICA,
by the Secretary of the Air Force

BY: _____

This Right-of-Way is also executed by Grantee this _____ day of _____, 200__.

(Name of Organization)

(Title)

ATTACHMENTS

ATTACHMENT 1

Any approval by said officer required by this Attachment may, in said officer's discretion, be granted in advance and on a blanket basis.

A. Personnel

Grantee shall employ, directly or by contract, competent supervisory, administrative, and direct labor personnel to accomplish the work performed on the Premises. Grantee shall not knowingly hire off-duty Air Force engineering personnel or any other person whose employment would result in a conflict of interest or would otherwise violate The Joint Ethics Regulation, DoD Directive 5500.7-R. When speaking, understanding, and reading safety, security, health, and environmental warnings are an integral part of the duties of Grantee's personnel, Grantee shall only utilize personnel on the Premises who can fluently speak, understand, and read the English language. Grantee shall conduct all of its business on the Installation in a professional and courteous manner. Grantee's employees shall present a neat appearance and be readily recognizable as Grantee's employees. All vehicles of Grantee, while on the Installation, shall be readily identifiable as belonging to Grantee.

B. Work Standards

Grantee shall construct, install, repair, and maintain its property, including equipment, in a safe, thorough, and reliable manner and in conformance with applicable federal regulations and national professional codes. If Grantee owns or operates a utility system off the Premises but connected to the utility system on the Premises, it will apply at a minimum the same standards of construction, installation, repair, and maintenance it applies to its system off the Premises to its system on the Premises.

C. Excavations

Grantee shall obtain a written excavation permit from said officer before commencing any digging or excavation on the Installation; the excavation permit will contain requirements normally applied to similar excavation work on the installation. Said officer will notify Grantee as to reasonable time periods for applying for an excavation permit. In close proximity to other utility systems, Grantee shall excavate by hand to preclude accidental interruption of services, equipment damage, and injury to workers. Excavated areas shall be backfilled to the original density and grade. Open excavations shall be barricaded when Grantee's personnel are not present in the immediate vicinity of the work site. Open excavations at the completion of the workday shall be adequately covered to prevent accidents and access by children. When cutting pavements, traffic shall be maintained over at least half the width of the pavement, unless otherwise directed by said officer. Traffic barricades and warning lights to mark the excavation shall be provided by Grantee. The restored pavement shall be equal to or better than the original pavement.

D. Communications Equipment and Foreign Object Damage

Prior to operating communications devices on the Installation, Grantee shall obtain the approval of said officer as to frequency use. Grantee shall comply with the Installation's foreign object damage prevention program whenever it engages in activities on or around the flightlines or runways.

E. Dust Control

Grantee shall maintain all excavations, embankments, stockpiles, access roads, and all other work areas free from excess dust to avoid causing a hazard or nuisance to base personnel and surrounding facilities. Dust control shall be performed as the work proceeds and whenever dust nuisance or hazard occurs.

F. Lawn Areas

Lawn areas rutted by equipment or otherwise damaged shall be leveled by the addition of topsoil or otherwise repaired by tilling and leveling. These areas shall be resodded or seeded and fertilized to match the existing vegetation or the vegetation that existed before damage. Sod, seed, and fertilizer types and mixtures will be approved by said officer.

G. Plant Control

After obtaining the prior permission of said officer, Grantee may trim or remove plants and trees that pose a potential hazard to its utility system. In those areas where the plants or trees contribute to historic or esthetic values and trimming or removing them would be destructive of those values, Grantee may be prohibited from trimming or removing them. In all instances, plants or trees listed as threatened or endangered under applicable federal, state, interstate, or local law will not be harmed by the activities of Grantee.

H. Cleanup

After the work is completed, the work site shall be returned to its original state.

EXHIBITS

EXHIBIT A—MAP OF PREMISES

Exhibit A maps shall be provided on request. These maps show the known locations of the utility system. Portions of the utility system may not be fully shown on the map or maps. Any such failure to show the complete utility system on the map or maps shall not be interpreted as that part of the utility system being outside the Premises. The Premises are co-extensive with the entire linear extent of the utility system sold to Grantee, whether or not precisely shown on the map or maps attached hereto as this Exhibit A.

EXHIBIT B—DESCRIPTION OF PREMISES**B.1. General Description of the Utility System, Lateral Extent of the Right-of-Way, and Points of Demarcation:****UTILITY SYSTEM DESCRIPTION:**

The utility system may be composed of, without limitation, wells, well pumps, supporting emergency generator sets, water treatment equipment, valves, fire hydrants, water distribution mains, meters, booster station pumps, storage tanks, reservoirs, all related electrical controls, and computer hardware and software used to operate and control the production and delivery of water to end users on the Installation.

LATERAL EXTENT OF UTILITY SYSTEM RIGHT-OF-WAY:

For pipe sizes of 24 inches in diameter or less, 26-feet-wide, extending 13 feet on each side of the utility system, as installed.

For pipe sizes greater than 24 inches in diameter, 50-feet-wide, extending 25 feet on each side of the utility system, as installed.

UTILITY SYSTEM POINTS OF DEMARCATION:

The point of demarcation is defined as the point on the utility system where ownership changes from the utility system owner to the facility owner. The table below identifies the type and general location of the point of demarcation with respect to the facility for each scenario.

Point of Demarcation (POD)	Applicable Scenario	Sketch
POD is at the water meter, backflow device, or valve (closest apparatus to the exterior of the structure).	Water meter, backflow device, or valve is located on the service line entering the structure within 25 feet of the exterior of the structure.	<p>The sketch shows a rectangular structure on the left. A horizontal line representing the service line enters the structure from the right. Just outside the structure, on this line, is a circle with two small circles inside, representing a water meter. An arrow points to this meter with the label 'Water Meter'. Below the meter, the line is labeled 'Point of Demarcation'. To the right of the meter, the line continues into the structure. To the left of the meter, the line continues as a 'Distribution Pipe' to the right edge of the sketch. The line between the meter and the structure is labeled 'Service Line'.</p>
POD is where the service line enters the structure.	No water meter, backflow device, or valve exists on the service line entering the structure. Service valve may be within 25 feet of the structure at any time. Down stream side of the service valve will become the new point of demarcation.	<p>The sketch shows a rectangular structure on the left. A horizontal line representing the service line enters the structure from the right. An arrow points to the point where the line enters the structure with the label 'Point of Demarcation'. To the right of this point, the line continues into the structure. To the left of this point, the line continues as a 'Distribution Pipe' to the right edge of the sketch. The line between the point of demarcation and the structure is labeled 'Service Line'.</p>

Point of Demarcation (POD)	Applicable Scenario	Sketch
If the fire suppression system has a storage tank, then the POD is located on the inlet side of the isolation valve or backflow prevention device closest to the storage tank. If no storage tank is present, the POD is located on the inlet side of the PIV or isolation valve closest to the fire suppression pumps.	Fire suppression system is provided flow and/or pressure by the potable water distribution system. These systems are typically dedicated to serving one facility or a small cluster of facilities.	None
POD is located on the inlet side of the PIV, isolation valve, or backflow prevention device closest to the fire suppression system.	Fire suppression system is connected to the potable water distribution system.	None
POD for irrigation systems is the inlet side of the backflow prevention device or isolation valve closest to the irrigation system.	Irrigation system is fed directly from potable water distribution system.	None
POD is the inlet side of the hose bib or water fountain assembly's connection to the service lateral. Note: A service valve may be installed within 25 feet of the hose bib or water fountain at any time. Once installed, the inlet side of the service valve becomes the new POD.	Drinking Fountains and Hose Bibs connected to the water distribution system (typically found at ballfields and outdoor recreation areas). <u>No valve is located on the lateral</u> providing water service to the drinking fountain or hose bib within 25 feet of these connections.	None
POD is the inlet side of the service valve.	Drinking Fountains and Hose Bibs connected to the water distribution system (typically found at ball fields and outdoor recreation areas). <u>Service valve is located on the lateral</u> providing water service to the drinking fountain or hose bib within 25 feet of these water use devices.	None

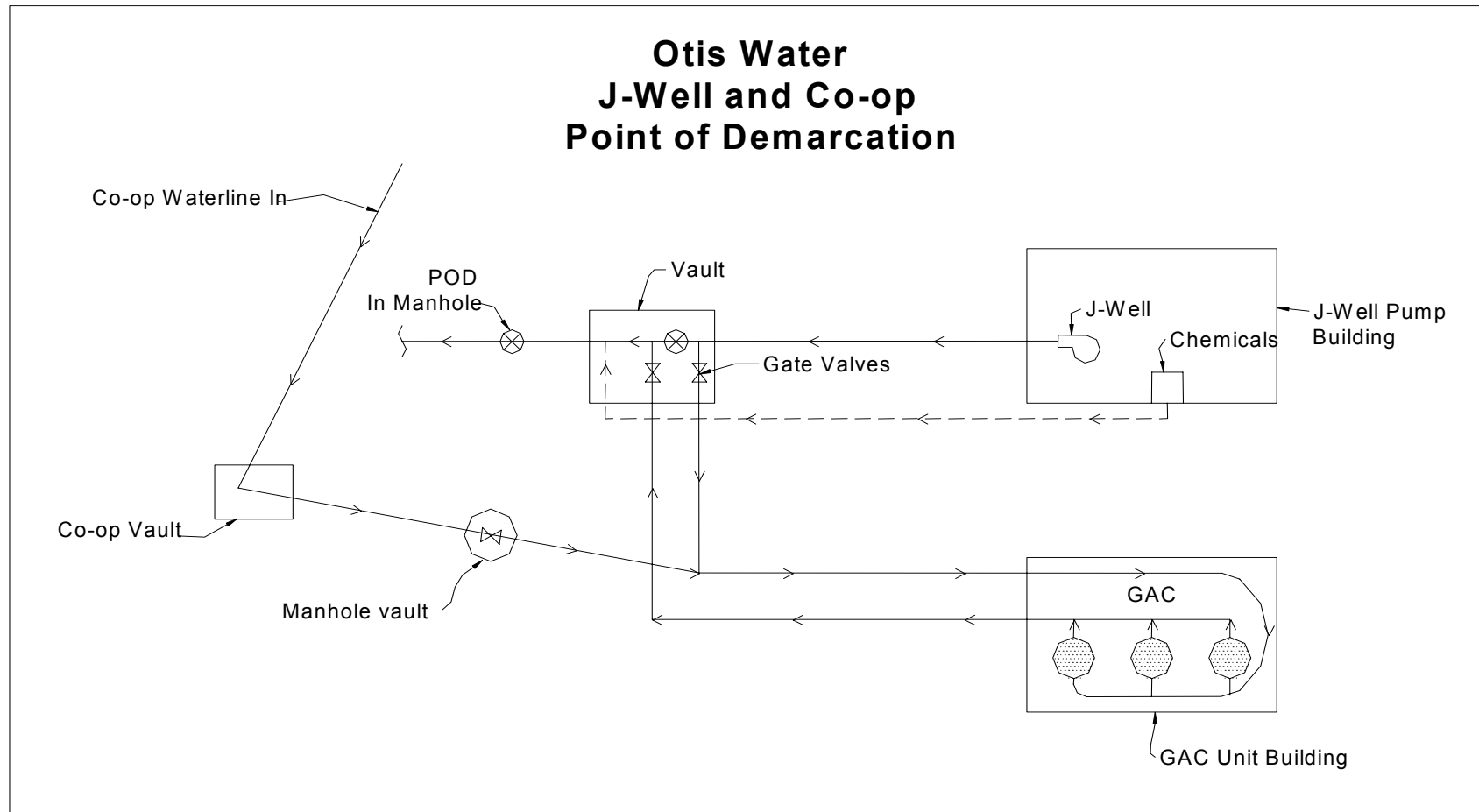
Point of Demarcation (POD)	Applicable Scenario	Sketch
<p>POD is at the overhead service line's connection to the service entrance mast.</p> <p>Note: If an electric meter is present, or is to be installed, the owner of the electric distribution system on the installation is the owner and maintainer of the electric meter and the can. The POD for the electric meter is at the water utility owner's conductors to the electric utility owner's conductors. This meter POD applies regardless of the location of the electric utility owner's meter. The water utility owner will own the service entrance mast.</p>	<p>Electric power is provided to a water facility via an <u>overhead</u> service drop. This configuration could be found at facilities dedicated to the water utility such as a water well, pump station, or water tower.</p>	None
<p>POD is at the transformer secondary terminal spade.</p> <p>Note: If an electric meter is present, or is to be installed, the owner of the electric distribution system on the installation is the owner and maintainer of the electric meter. The POD for the meter is at the water utility owner's conductors to the electric utility owner's conductors. This meter POD applies regardless of the location of the electric meters and transformers.</p>	<p>Electric power is provided to a water facility via an <u>underground</u> service connection. This configuration could be found at facilities dedicated to the water utility such as a water well, pump station, or water tower.</p>	None

UNIQUE POINTS OF DEMARCATION:

The following table lists anomalous points of demarcation that do not fit any of the above scenarios.

Building No.	Point of Demarcation Description
J Well Pump	The point of demarcation at the J Well Pump facility will be downstream from the potable water chemical addition equipment tie-in valve. This valve is located in a manhole near the valve vault. (see Figure 1)

Figure 1. Otis Water J-Well and Co-op POD



B.2. General Description of the Areal Extent of the Utility System:

Water service for Otis Air National Guard Base is provided by the base owned and operated “J” Well and a connection to the Co-op Water System, located on the north side of the airfield, near the “J” Well, Building 3002. There is also a connection to the Mashpee Water System adjacent to Elevated Storage Tank Number 3.

The intent of this areal description is to give a general flow pattern of the water system. Every line may not be mentioned. This description is based on drawings provided by the base Civil Engineer office. Title of the drawing set is “General Utility Map, Water Supply System, Otis Air Force Base, Massachusetts, Tab G-2”, dated 1 March 1962 with revisions through 22 Apr 1991. Also used were drawings titled “Otis Air National Guard Base, Cape Cod Massachusetts, Electrical Distribution System, dated January 1999” and “Base Roadways, Drawing Number OTS-910-002, dated 1 Mar 00. The areal description is intended to stand-alone but due to the multiple references to streets and buildings, access to the drawings or the electronic file will facilitate in following the general distribution pattern.

Beginning from the connections to the “J” Well treatment equipment and the Co-op Water System, a line runs southeast along the north side of Herbert Road to a connection point north of the marsh area where a 6-inch line to the Coast Guard area runs to the east to connect to the individual buildings in that area. The line then continues south, around the east side of the marsh and under the airfield pavement to connect to a line from the south side of North Truck Road. The line south of North Truck Road runs east to connect on Greenway Road before connecting to a line on Shelton Road. The line on Greenway Road runs north, connecting to a line from the “J” Well that runs along the north side of Herbert Road, before continuing north to provide service to the facilities in the BOMARC and UTES areas. Also connected to the BOMARC area is a 10-inch line that begins at the south center of the site and runs south-southwest, about midway between Greenway and Turpentine Roads, across Herbert Road before taking a short turn east to Shelton Road. The line on Shelton Road runs southwest, connect to the line south of North Truck Road and to the Elevated Storage Tank No. 2, before running into the center of the traffic circle where it connects to lines on North Outer Road to the east and Connery Avenue to the west. It then continues to the south side of the traffic circle and follows the east side of West Outer Road to the southwest to the intersection of Lee/South Inner Roads before turning south to the north side of South Outer Road at Guenther Road where lines along these two roads connect.

The line on Guenther Road flows south to the north side of the railroad tracks and then turns southeast to the Coal Storage Area and forms a complete loop around the area. The line on South Outer Road flows southeast to a connection east of Simpkins Road. This connecting line runs south to the Sewage Treatment Plant. The line on South Outer Road continues to the west side of East Outer Road where a 10-inch line runs northeast to Richardson Road. The South Outer Road line continues to a point east of East Truck Road where it turns south to connect to a line on the south side of the street. This line on the south side of South Outer Road begins in the west at the connection at the northwest

corner of the intersection of South Outer Road and East Outer Road and runs south, across to the south side of South Outer Road and then follows the south side of the street to the connection point from the line on the north side of the road before continuing along the south side of the street to a point south-southwest of the end of the runway and turning to cross to a connection point on the north side of the street. From this connection point a line runs east to the intersection of South Outer Road and Granville Avenue where a line to Elevated Storage Tank No. 3 is connected.

From the storage tank connection, the line runs northeast, parallel to Granville Avenue to a connection point northwest of Building 186 where a line to that building connects. The Granville Avenue line continues to the intersection with Corn Street where a line connects and runs northwest to connect to a line on Izzea Street. The Granville Avenue line then continues to connect to a line on Reilly Street. The Reilly Street line begins at the tower, Building 131 in the northwest and runs to a dead end at the Building 201 access road in the southeast. From a connection to the Reilly Street line to the south of Building 124, a line runs northeast to the southeast side of Building 124.

The line on Izzea Street begins on the northwest side of the Cold Storage Facility, Building 126 and flows southwest following the south side of Reichert Street to the south side of Chavez Street and then turning northwest to the intersection of Chavez and Izzea Streets where a line beginning at the southeast corner and flowing between Buildings 155 and 156 connects from the northwest. The line then follows Izzea Street around the south end of the flight line area and continues around the north side of the storage tanks to the southeast side of the Alert Facility, Building 175. It then turns southwest for a short distance before turning back to the northwest, along the southwest side of the Alert Facility, and continues to the south end of the runway overrun and connects to a 10-inch line from the north. This line to the north runs to the south side and near the east end of Lingley Avenue before running west, along Lingley Avenue, to connect to the line on East Outer Road.

Beginning from a connection point to the East Outer Road line, south of Lingley Avenue, a line runs northwest, between Lingley Avenue and Building 322, to the southeast corner of Building 102 where it turns and runs along the southeast side of that building, to the northeast corner, before turning southeast to complete the loop back to a connection point north of Lingley Avenue. From a connection point to this loop at the northeast corner of Building 102, a line flows northwest to the east side of Generals Blvd and then follows Generals Blvd to a connection point on North Outer Road. The North Outer Road line begins in the west at a connection to the West Outer Road line at the Traffic circle and runs along North Outer Road to the northwest corner of Building 2822 in the southeast to the intersection of East Inner Road and Richardson Road. The Richardson Road line then runs east to the connection point at the East Outer Road line and continues to the intersection of Bradshaw Street. It then follows Bradshaw Street south before turning west, south of the abandoned automobile parking area, and connecting back to the East Outer Road line.

Beginning at the connection to the West Outer Road line at the traffic circle, a line runs west on Connery Avenue to a point about half way to West Truck Road where a 12-inch line running parallel to West Outer Road connects to a line on Lee Road to the south. The Connery Avenue line continues to a point to the west of West Truck Road where a line from Lee Road, following the alignment of Weaver Street, connects from the south. The Connery Avenue line then continues west to Frank Perkins Road and continues to Chenault Road where service is provided to the area north of Connery Avenue through a network of lines that loop back south on Ramey Road to connect to the Connery Avenue line.

At the intersection of Chenault Road, the Connery Avenue line turns southwest to East Hospital Road to begin a major north-south line that will provide service to all portions of the housing area. This line continues south, through a network of lines between East Hospital and West Hospital Roads, to connect to a line on Arnold Avenue in the Coast Guard housing area. The line continues south to the east end of Spaatz Street. It then follows Spaatz Street west to Vandenburg Drive and continues west a short distance before turning south on Lindberg Avenue. The line runs to the end of Lindberg Avenue and continues through Harmon Circle where it turns west to connect to a line on Lemay Avenue south of the intersection of Andrews Street. The line then follows Lemay Avenue south to Underhill Street where it turns southeast to Curtis Blvd. The line then runs east before turning south on Hunter Avenue and follows the alignment of Hunter Avenue to Norstad Street where it turns north and follows the street to Turpentine Road. The line then follows Turpentine Road to the north to connect to the line on Lee Road.

The line on Lee Road begins in the east at a connection to the West Outer Road line at the intersection of Lee Road and runs west, to a point east of Building 3302, Well B, then turns north to the south side of Lee Road. It then follows the road west to connections at Weaver and Turpentine Roads and continues on to East Hospital Road where it turns southwest to Ent Road. It then runs northwest on Ent Road to Vandenburg Drive and turns southwest to Arnold Drive before turning northwest to connect to the main north-south line on Arnold Drive.

Beginning at a connection to the Weaver Road line at Beaman Street, a 10-inch line runs west-northwest to the east side of East Hospital Road and then connects to an 8-inch line that runs west to connect to the main north-south line in the housing area.

B.3. Description of Restricted Access Areas Under Condition 22.2:

Description	Facility #	State Coordinates	Other Information
400,000-gallon Elevated Storage Tank #2	Building 2302		Near the intersection of Shelton Road and North Outer Road. Tank located inside chain link fence enclosure.

Right-of-Way No. _____

Description	Facility #	State Coordinates	Other Information
400,000-gallon Elevated Storage Tank #3	Building 2303		At the intersection of Granville Avenue and South Outer Road
J Well gate valve at POD			Gate valve is located in a vault inside the fenced J Well facility area.

Right-of-Way No. _____

EXHIBIT C—ENVIRONMENTAL BASELINE SURVEY

The Air Force has determined that it is not required to conduct an EBS in regard to the sale of this utility system.